In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 663/2001

(Old No. 24 of 1997)

1- Prem Ram

2- Mohan Ram

Both sons of Dhan Ram,

3- Smt. Lachhima Devi W/o Mohan Ram

4- Smt. Bhjawani Devi W/o Prem Ram,

All residents of Patwari Area Patli

Tehsil Bageshwar (Almora)

Appellants.

Versus

State of U.P.

Respondent.

Sri B.S. Adhikari, learned counsel for the appellants.

Sri D.K. Sharma, learned G.A. for the State.

Coram: Hon'ble P.C. Verma, J.

Hon' ble B.C. Kandpla, J.

Dated: 1st March, 2006

This criminal appeal has been preferred by the appellants against the judgment and order dated 27-11-1996, passed by the Sessions Judge, Almora in S.T. No. 21/1993, thereby convicting the accused/appellants for the offences under Sections 302/34 and 307/34 I.P.C. and sentencing each of them of life imprisonment under Section 302/34 I.P.C. and to undergo five years R.I. under Section 307/34 I.P.C. However, the sentences were directed to run concurrently.

2- Brief facts of the prosecution case are that On 4-9-1992 at about 8 P.M., accused/appellants caused injuries to Kishan Ram, Nain Ram, Harish Ram, Gopal Ram sons of Jas Ram with iron rod, Lathi and Dranti with the intention of causing the death, on the passage near their house situated in village Patli District Almora. Kishan Ram Sustained grievous injuries and when Modha Ram, informant tried to intervene, he also received injuries. The first information report of the incident , Ext. Ka.1

was lodged by Modho Ram at the Patwari Chauki Patli, through the Gram Pradhan. On the basis of the written report, Patwari of the area prepared chick F.I.R. Ext. Ka. 12 and registered a case against the accused and started investigation.

3- On 5-9-92 the I.O. recorded the statement of informant Madho Ram under Section 161 Cr.P.C. and prepared site-plan, Ext. Ka.13 Thereafter the carried injured Kishan Ram, Harish Ram, Narayan Ram, Gopal Ram, and Madho Ram to Baijnath hospital, where the doctor medically examined the injured persons and prepared medical examination reports Ext. Ka. 14 to ka. 18. The doctor on finding the injuries grievous, advised the injured to get treatment from District Hospital. On 14-9-1992 Kishan Ram succumbed to his injuries in the Base Hospital, Haldwani.

4- The I.O. took into possession blood-stained and plain earth of the place of the occurrence and prepared memo of recovery, Exts. Ka. 19 and Ka.20. He also seized the weapons used in the incident, iron rod, Lathi and Dranti and prepared recovery memos Exts. Ka. 21 and Ka.22. He also sent the blood-stained and plain earth and the blood stained clothes of Kishan Ram deceased, for chemical examination. The Chemical Examiner after examination of the artices, sent his report, Ext. Ka.16. On completion of investigation, the I.O. submitted charge sheets Ext. ka.23 and ka.24 against the accused persons.

5- The case being committed to the court of Sessions, charges under Sections 302/34 and 307/34 I.P.C. were framed against the accused persons, to which they pleaded not guilty and claimed to be tried.

6- In order to prove its case, the prosecution in all examined eight witnesses. P.W.1, Madho Ram, is the informant as well as injured witness. He has deposed that on 4-9-92 at about 8 P.M., he was doing his work at his house. he heard the noise of quarrel at the house of Prem Ram and Mohan Ram, He went there in torch light and saw that accused Mohan Ram was having iron pipe, accused Prem Ram was having Lathi Smt. Bhawani Devi was armed with Dranti and Lachima Devi was having Danda in her hand and they were assaulting Kishan Ram, Harish Ram, Gopal

Ram and Nain Ram. This witness deposed that the incident had occurred on the way near the house of the inured persons. He deposed that Mohand Ram assaulted Kishan Ram by iron pipe on his head. He also stated that when he tried to intervene, accused Prem Ram assaulted him on his thigh with a Danda. He has also deposed the on 4.9.92 after the incident in the night he handed over written report, Ext. ka.1 to Pradhan of the Village Dharma Nand Joshi and thereafter gave it to the Patwari at 11 P.M.

7- P.W.2 Gopal Ram, P.W.3 Harish Ram, and P.W.4, Nain Ram and are injured eye witnesses of the incident. All of them have supported the prosecution case and narrated about the incident. They have stated that accused Mohan Ram was having iron pipie in hands and he caused injuries on the head of Kishan Ram deceased with iron pipe whereas accused Prem Ram made assault with Danda. Accused Smt. Bhawani Devi caused injuries to Harish Ram with Dranti and accused Lachima Devi assaulted with Lathi. The witnesses also deposed that at the time of incident there was moon-light. These witnesses also narrated about their medical examination and x-rays. They proved their respective injury reports prepared by the medical officer.

8- P.W.5, Gopal Singh accompanied the injured witnesses to Baijnath hospital and therafter upto District Hospital and stated that Kishan Ram died in the hospital due to injuries on 14-9-1992 at about 1 ½ a.m. He is also the witness of inquest of the death body of the deceased. He proved inquest report, Ext. Ka.4. He is also witness of seizure of clothes of deceased Kishan Ram and proved memo Ext. Ka.5.

9- P.W.8, Bhim Singh Rana, Patwari took the injured Kishan Ram who subsequently died in the hospital on 14-9-1992. He also took other injured namely Harish Ram, Gopal Ram, Nain Ram and Madho Ram to Baijnath hospital, where these injured were medically examined by the doctor in the presence of the Patwari (P.W.8). The doctor also prepared medical examination reports of all the inured, which were proved by Bhim Singh Rana, P.W.8 as Exts. Ka. 14, Ka.15, Ka.16, Ka.17 and Ka.18. The medical examination report of all the injured persons namely Kishan Ram,

Harish Ram, Nain Ram, Gopal Ram and Madho Ram are as follows:-

On the person of Kishan Ram, deceased, the following injuries were found:-

(1) A lacerated wound on the left side of head, measuring 6cm x 2cm x bone dep. Blood clot present and fresh bleeding present, suspected internal brain injury and haemorrhage, 2 cm away from the left eye brow. Advised x-ray of skull.

(2) A lacerated swelling size about 4 cm x 2cm on the left side of forehead and around eye(left). Redish blue in colour.

(3) A lacerated wound measuring 1cm x 1cm skin deep on the chin, fresh bleeding present.

(4) A contusion on the chest right side, measuring 10cm x 1.5cm. starting from right nipple to tip of clavicle (right) middle ends red in colour.

(5) A lacerated wound on the outer surface of right arm with contused swelling of right arm, 6cm away from right elbow. Suspected fracture of right arm bone. Advised x-ray of right arm.

(6) An abrasion on the right shoulder on back side, size 1cm x 0.5 cm.

In the opinion of the doctor Injuries 1 and 5 and 4 were grievous in nature and injury Nos. 2, 3 and 6 were simple in nature. He also opined that the injures were caused by blunt and hard object.

On the person of Harish Ram the following injuries were detected:-

(1) An incised wound measuring 6cm x 1cm x bone deep on the head left side, 6cm above the left ear, sharp-edged, fresh bleeding present. Advised x-ray of skull suspected fracture of skull bone.

(2) A contused swelling about 16cm x 8cm size on or around left shoulder with abrasion. Advised x-ray of

left arm and shoulder for the suspected fracture left arm bone.

In the opinion of the doctor injury Nos. 1 and 2 were grievous In nature and caused by blunt and hard object.

On the person of injured Nain Ram, following injuries were found by the doctor:-

(1) A lacerated wound on the back of head, measuring 3cm x 0.5, 8cm way from left ear. Fresh bleeding was present.

(2) A contused swelling on the left forearm measuring 6cm x 3cm, 5cm away from left wrist joint. Advised x-ray of left forearm bone for suspected fracture.

(3) An abrasion on the chest measuring 6cm x 0.3 cm over right side of chest, staring from right nipple to midline Advised chest x-ray.

(4) A contused swelling measuring 10cm x 8cm on the left thigh, 8cm away from left knee.

In the opinion of the doctor injury Nos. 1,3 and 4 were simple I n nature and injury No.2 was grievous in nature caused by blunt and hard object.

On the person of Gopal Ram, following injuries were found by the doctor:

(1) An abrasion on the chest, measuring 3 cm x 1cm on the middle of chest, 5cm below the root of neck. Redish in colour. Advised x-ray of chest.

(2) A contusion measuring 9cm x 0.5cm on the chest left side, 1cm apart from left nipple.

(3) A contused swelling on right shoulder, measuring 5cm x 3cm. Advised x-ray right shoulder.

In the opinion of the doctor the injures were simple in nature and caused by blunt object and by friction.

On the person of injured Madho ram, the doctor found the following injury:-

An abrasion measuring 2cm x 1.5cm on the back of left thigh, redish in colour, 12cm above the left knee joint.

In the opinion of the doctor the injury was simple and caused by blunt object.

The doctor also opined that the injuries to the injured persons were approximately within 12 hours old.

10. Dr. G.C. Pandey, conducted the autopsy on the dead body of Kishan Ram on 14-9-1992 at 2.50 P.M. According to him the deceased was average built. Rigor mortis was present in both the extremities. He found the following ante-mortem injuries on the body of the deceased:-

1- Stitched wound of the size 4.4 cm over left side of forehead, 3cm above outer angle of left eye.

2- Contusion two in number, running parallel to each other of the size 9cm x 0.5 cm over front of right side of chest from right nipple to medial end of right clavicle.

3- Lacerated wound of the size 4cm x 0.2 cm over back of right upper arm, 8 cm above right epicondyle.

4- Fracture lower third shaft of right humerous.

On internal examination, the doctor found the right parieto-temporal bone fractured, right parieto temporal bone was lacerated. According to him the cause of death was shock and coma as a result of the aforesaid ante-mortem injuries. The witness has proved post mortem examination report, Ext. Ka.6.

11- P.W.7 Dr. G.S. Jawandha, then radiologist Base Hospital, Almora conducted x-ray of the injuries of Kishan Ram, Harish Ram, Gopal Ram and Nain Ram and prepared x-ray reports, Exts. Ka.7 to Ka. 11 respectively. He found fracture of the left side of skull of Kishan Ram. He also detected fracture of bones of other injured persons. This witness proved the x-ray reports.

12- P.W.8, Bhim Singh Rana, Patwari investigated the case and narrated about the steps taken by him during the investigation and also prove the prosecution papers prepared by him during the investigation, as referred above.

13- The accused persons in their statements recorded under Section 313 Cr.P.C. denied the allegations and stated that they have been falsely implicated in the case. Accused Mohan Ram

also stated that Hari Ram, Madho Ram, Nain Ram and Mathura have assaulted his younger brother Prem and when they were going to lodge the report, the Patwari arrested them. He also stated that Kishan Ram was ill and he died due to his ailment. However, the accused did not adduce any evidence in their defence

14- The trial court after assessing the evidence on record and hearing the counsel for the parties reached at the conclusion that the prosecution was successful in proving the charges against the accused/appellants and accordingly held them guilty under Sections 302/34 and 307/34 I.P.C. and sentenced them as aforesaid.

15- Being aggrieved from their conviction and sentences, the accused/appellants have preferred the appeal.

16- We have heard the learned counsel for the accused/appellants, learned G.A. and perused the record.

17- The learned counsel for the appellants has argued before us that in fact the prosecution has utterly failed to establish the guilt of the appellants beyond reasonable doubt. He ahs also submitted that the ocular version in fact does not find corroboration by the medical evidence, as well as there are certain material contradictions in the statements of the witnesses.

18- In order to appreciate the arguments advanced by the learned counsel for the appellants, we have to scrutinize the evidence on record thoroughly.

19- First of all we come to the motive part of the case. It is settled law that the motive does not play an important role, where the direct evidence is available. But in the instant case the motive itself finds place in the F.I.R. as there is a mention that the parties were in inimical terms to each other over the question of taking water from the “naula” and a quarrel had also taken place between them earlier in this regard. P.W.1, Madho Ram and other injured witnesses, viz. Gopal Ram, R.P.2, Harish Ram, P.W.3, and Nain Ram P.W.4 have also deposed in their statements that a day before the incident a quarrel had taken place between the deceased Kishan Ram, injured Gopal Ram, Harish Ram and Nain

Ram and the accused persons because of the reason that the accused persons had cut the flow of water from the “Naula”. This is a reason that the accused had committed the instant incident on 4-9-1992. In cross-examination of the aforesaid witnesses, suggestions were made to them, which itself go to show that there was some dispute between the accused and the deceased over taking of water from the “naula” and a quarrel in this regard had taken place between them a day prior to the instant incident. Therefore, in these circumstances, we are of the view that there is sufficient evidence to show that the accused persons had a motive to commit the present crime.

20- The second aspect of the matter is that the first information report in this case has been promptly lodged. The record shows that the incident had taken place on 4-9-1992 at 8 P.M. in village Patli Toke Katyuri Simar. The report of this incident was given by the infortmant P.W.1, Madho Ram to Dharma Nand Joshi, Pradhan of the village. P.W.1, Madho Ram has also stated that the written report was given by him to Patwari in the night at 11 P.M. and the Patwari thereafter registered report at Patwari Patti under Section 307/34 I.P.C. on 5-9-1992 at 4 A.M. The promptness of the first information report itself appears from this fact that the deceased Kishan Ram who was in an injured state of affair as well as the other injured witnesses were taken to baijnath Government Hospital in the morning of 5-9-1992. From there they were referred to District Hospital, Almora. Injured Kishan Ram died in the hospital on 14-9-1992 at 12 P.M. The injury reports of all the witnesses as well as Kishan Ram, the injured who subsequently died, also reveal that all the injured were medically examined by the doctor on 5-9-1992 in the morning at P.H.C. Baijnath, Almora. Injured Kishan Ram, who subsequently died, as well as the other injured witnesses, were referred to District Hospital, Almora on 5-9 1992, so all this evidence clearly goes to show that there is no delay in lodging the first information report and this factor itself is indicative of the circumstance that the complainant had no time with him for any kind of deliberation in order to falsely implicate the accused persons in the crime.

21- Now we scrutinize the evidence of all the witnesses in order to come to the conclusion with regard to the participation of the accused/appellants in the commission of the crime.

22- P.W.1, Madho Ram has stated in his deposition that accused/appellant Mohan Ram was having an iron rod in his hand, while accused/appellant Prem Ram was having a Lathi in his hand. He has further deposed that accused/apellant Smt. Bhawani Devi was having sickle in her hand and accused/appellant Smt. Lachima Devi was having a Danda in her hand and all these persons were assaulting Kishan Ram, Harish Ram, Gopal Ram, and Nain Ram. This witness has stated that Mohan Ram Accused/appellant has assaulted with iron rod at the head of Kishan Ram, due to which Kishan Ram fell on the road. This witness has stated that when he went at the spot to intervene them, accused/appellant Prem Ram assaulted at him also with Lathi. This witness in his cross-examination has stated that he did not go to the place of occurrence and he went at the place of occurrence after the incident had taken place and the accused has started leaving the place of the occurrence. This witness has further specifically stated in his cross-examination that he did not go to the place of occurrence during the course of the Marpit. This witness has further stated that Mohan Ram assaulted at Kishan Ram for at least 5 to 6 times. This witness has further stated that Prem Ram assaulted at Harish Ram with Danda and he also assaulted at him while accused/appellant Smt. Bhawani Devi had assaulted on the head of Harigh Ram only once. He has also stated that accused/appellant Smt. Lachima Devi assaulted with Danda at Kishan Ram, Gopal Ram and Nain Ram. The evidence of this witness with regard to the participation of the accused/appellants for commission of crime does not inspire confidence, as this person had himself stated in his deposition that he did not go to the place of the occurrence during the course of the Marpit. Therefore, this witnesses is completely unable to assign the specific role to the accused/appellants. It is important to mention here that the time of the incident is 8 P.M. and there does not appear to be any source of light at the scene of occurrence, therefore in case if

this witness had witnessed the incident from a distance, then it was not possible for him to specify the accurate role of the accused/appellants.

23- P.W.2. Gopal Ram is an injured eye witness of the incident and he has stated that accused/appellant Mohan Ram was having an iron rod in his hand and he hit the iron rod at the head of Kishan Ram and accused/appellant Prem Ram had also assaulted at Kishan Ram with Lathi. This witness has also stated that accused/appellant Prem Ram had also assaulted on his person with his Lathi. This witness has also stated that Kishan Ram fell on the earth after sustaining the iron rod-blow given by accused/appellant Mohan Ram. This witness has further deposed that Smt. Bhawani Devi accused/appellant assaulted at Harish Ram. This witness has further deposed that he can not tell as to whether accused/appellant Smt. Lachima assaulted any one with the Lathi. This witness in his cross-examination has also stated that he became unconscious after receiving injuries and he could not see as to which of the accused person hit to whom. He has stated that before he fell down on the earth and became unconscious after sustaining injuries, it was accused/appellant Prem Ram who assaulted on his person. This witness has further deposed that he does not remember as to which of the accused/appellant had assaulted his brother Harish Ram.

24- In case if the the testimony of injured Harish Ram, P.W.3, is scrutinized, then it appears that he has deposed that it was accused/appellant Mohan Ram who hit Kishan Ram with an iron rod on his head. He has also stated that accused/appellant Prem Ram had given Lathi blow on the head as well as on the other parts of the body of injured Kishan Ram. This witness in his examination-in-chief has stated that accused/appellant Smt. Bhawani Devi head given a sickle blow on his head. This witness has also stated that accused/appellant Smt. Lachima Devi assaulted Nain Ram. In case, if the cross-examination of this witness is assessed, then it reveals that he could see only Prem Ram and Mohan Ram at the place of the occurrence and the accused persons all of a sudden started attacking on them. He has

also stated that after sustaining the injuries he, Gopal Ram and Kishan Ram fell on the earth and became unconscious, therefore, he could not see that which of the accused/appellant had assaulted whom. It would be pertinent to mention here that this witness has specifically stated in his cross-examination at paragraph-11 that he can not tell as to who had assaulted on his head. This witness has also deposed in paragraph-10 of his cross-examination that he, Gopal Ram and Kishan Ram had sustained injuries by the assault of two accused Mohan Ram and Prem Ram and after sustaining injuries the injured became unconscious, therefore, they could not see as to who reached at the place of occurrence. Therefore, the deposition of this witness makes the picture clear that the accused Mohan Ram and Prem Ram are the main assailants in this case, who had assaulted the complainant side with the 'Sariya' and Danda.

25- As far as the injury caused by the accused/appellant Bhawani Devi is concerned, the case of the prosecution is specific that it was Smt. Bhawani Devi who caused injuries on the person of Harish Ram, but the statement of Harish Ram tells the otherwise tale and on the basis of the statement of Harish Ram, it cannot be said that it was actually accused/appellant Smt. Bhawani Devi who caused the injuries on the person of Harish Ram.

26- Further the statement of another injured eye witness Nain Ram, P.W.4, if s taken into account, then it reveals that there was some quarrel on the way of the village and when he went at the place of the occurrence, he saw that Harih Ram and Kishan Ram had fallen on the earth and accused persons Prem Ram, Mohan Ram, Smt. Bhawani Devi and Smt. Lachima Devi were assaulting these persons. He has stated that accused Mohan Ram was having an iron rod, while accused Prem Ram and Smt. Lachima Devi were having Lathi and accused/appellant Smt. Bhawan I Devi was having a sickle in her hand. This witness has stated that when he reached at the spot and tried to lift Kishan Ram then Bhawani Devi assaulted at his head and Prem Ram also assaulted on his person with a Lathi, while Mohan Ram also assaulted at him. This

witness has also stated that Madho Ram was also assaulted by the accused/appellant Mohan Ram. In case if the cross-examination of this witness is perused, then it reveals that he has deposed therein that he could not see the accused person assaulting any one because the injured persons had already become unconscious. This witness has stated that he was assaulted on his head by Smt. Bhawani Devi with sickle and he became unconscious after sustaining that injury.

27- On the basis of the oral testimony of the witnesses, the picture becomes quite clear and it is the case of all the eye witnesses, who also sustained injuries on their persons at the time of the occurrence, that accused/appellant Mohan Ram had assaulted on the head of Kishan Ram, who sustained head injury and on account of that injury he died subsequently in the Hospital. The oral testimony of the witnesses also establishes this aspect that accused/appellant Prem Ram also assaulted at the complainant side with Lathi in his hand due to which the complainant side sustained injuries on their persons.

28- As far as the participation of accused/appellants Smt. Bhawani Devi and Smt. Lachima Devi is concerned, there is a material contradiction in the statements of the witnesses. According to Harish Ram, P.W.3 it could not be definitely concluded that it was Bhawani Devi who assaulted Harish Ram due to which he sustained injuries. P.W.2. Gopal Ram has specifically stated that Bhawani Devi had assaulted on the person of Harish Ram, with the sickle but the evidence of Harish Ram has created a doubt with regard to the participation of Bhawani Devi. Although P.W.4, Nain Ram has deposed in his statement that Bhawani Devi had assaulted on his head with the sickle but the presence of this witness at the time of the occurrence becomes doubtful as he has stated that he went at the place of the occurrence when the injured persons had already become unconscious.

29- Further the injury report of Nain Ram, P.W.4, shows that he sustained lacerated wound on his head and the doctor has opined that the injuries caused on the person of Nain Ram were

caused by hard and blunt object. Therefore, the medical version completely belies the testimony of Nain Ram as Smt. Bhawani Devi has been aissigned to have given a sickle blow on the head of Nain Ram and there is no incised wound on the person of Nain Ram, therefore, the participation of Bhawani Devi appears to be doubtiful in this case.

30- As far as the participation of another accused/appellant Smt. Lachima Devi is concerned, it has not come in the evidence of any witness that accused/appellant Lachima Devi had in fact assaulted any one with the Lathi which she was allegedly having in her hand at the time of the occurrence. Therefore, the participation of Lachima Devi also becomes doubtful in the light of the evidence adduced by the prosecution.

31- On the basis of the assessment of the ocular, as well as the medical evidence, we come to the conclusion that the prosecution has successfully established the guilt of the accused/appellants Mohan Ram and Prem Ram and it can be safely concluded that these two accused persons are guilty for having committed the offences under Section 302/34 and 307/34 I.P.C. The conviction and sentences recorded by the trial court against these two accused/appellants appears to be completely justified and we do not find any ground to interfere in the judgment and order passed by the trial court, convicting the aforesaid two accused/appellants.

32- As far as the accused/appellants Smt. Bhawani Devi and Smt. Lachima Devi are concerned, we have already observed on the basis of the deep scrutiny of the evidence available on record, that the role assigned to these two accused/appellants, does not find support with the ocular and medical version adduced by the prosecution. It might be possible that both the accused/appellants were present at the place of the occurrence but in view of the evidence available on record it does not appear that these two accused/appellants were having any intention to commit the murder or any intention to cause the injuries by their respective weapons which could have caused death of any of the injured persons. Mere presence of these two accused/Appellants at the spot does not warrant conviction , unless some specific role with a

specific intention is attributed to them. these two accused/appellants are, therefore, entitled to get the benefit of doubt under the prevailing circumstances of the case.

33- Having considered the entire evidence on record, we are of the view that the prosecution has successfully established the guilt of accused/appellants Mohan Ram and Prem Ram beyond reasonable doubt, while the accused/appellants Smt. Bhawani Devi and Smt. Lachima Devi become entitled for benefit of doubt.

34- The appeal is partly allowed with the modification that the appeal filed by the accused/appellants Mohan Ram and Prem Ram is dismissed and the impugned judgment and order passed by the Sessions Judge, convicting and sentencing them is confirmed. While the accused/appellants Smt. Bhawani Devi and Smt. Lachima Devi are entitled for acquittal in view of the benefit of doubt extended to them. The impugned judgment and order passed by the Sessions Judge, convicting and sentencing these two accused/appellants, is therefore, set aside.

35- We have been informed that the accused/appellant Mohan Ram is in jail. Therefore, he shall remain in jail in order to serve out the sentence imposed against him.

36- We have further been informed that accused/appellant Prem Ram has already been released form jail, as the Government has grated him remission, therefore, there is no need to pass any order pertaining to the accused/appellant Prem Ram in this regard.

37 In case if the accused/appellants Smt. Bhawani Devi and Smt. Lachima Devi are in jail, they shall be released forthwith.

38- Let the record immediately be sent back to the lower court concerned for compliance.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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